

Attachment
USEPA Section 401 Water Quality Certification for Nationwide Permits
in Indian Country as of May 11, 2007

Water quality certification is denied for the following activities:

- discharge of dredged or fill material located ½ mile upstream from waterbodies designated as Outstanding National Resource Waters, Exceptional State, and Special Aquatic Life Support Waters in The Kansas Administration Regulations (See www.kdheks.gov/nps/resources/specwaterinfo.pdf for a list of those waters.)
- discharge of dredged or fill material into fens, bogs, playa wetlands, and/or forested wetlands.
- any activity under NWP 13, 29, 39, 40, 41, 42, and 43 where the district engineer issues a waiver for length of impact
- any activity for a single residence impacting more than 1/4th acre under NWP 29.
- any activity on Big Soldier Creek located on or within the boundaries of the Prairie Band of Potawatomi Tribe in Kansas reservation boundaries. Contact the tribe for boundary details.

Water quality certification is issued, except as stated above, with the following conditions:

- This certification does not relieve the applicant of the responsibility to comply with applicable local, tribal, state, federal regulations or statutes, including regulations affecting any discharge into waters of the U.S.
- If the project is constructed and/or operated in a manner not consistent with the NWP, the permittee will be in violation of this certification.
- Copies of this certification shall be kept on the job site and readily available for reference by tribal members, Corps personnel, EPA personnel, the construction supervisor, construction managers and foremen.
- All practicable measures and precautions shall be taken to prevent pollution due to turbidity, pH, temperature, nutrients, suspended solids, floating debris, visible oil and grease, or solvents entering waters of the U.S., including wetlands, during construction and upon completion of the project. All equipment operated within any stream channel, pond, wetland

or other water body shall be cleaned away from waters of the U.S. and maintained to prevent fuel and oil leaks. These methods include, but are not limited to: off-site, upland, bermed fuel and oil storage and refueling areas, on-site spill containment equipment, a spill contingency plan, and spill prevention/contaminant training for on-site personnel. Should a spill of petroleum products or chemicals occur, contact shall be made immediately (within 24 hours) to the National Response Center at (800) 424-8802.

- Erosion control measures shall be used during construction to prevent erosion of soil surfaces. Measures to be used include, but are not restricted to: temporary sediment dams or berms, anchored hay bales, filter fabric, mulch, mesh burlap blankets, or permeable dissipaters, such as filter weave silt fence. All erosion control measures shall be placed on the landscape so as to maximize the control of the erosion/sediment runoff from the disturbed site and shall be maintained in place until construction is completed, and a ground cover is established.
- Clearing of vegetation should be minimized and limited to that necessary to accomplish the project. All disturbed areas should be protected to prevent erosion. Revegetation should include native species. Wherever practicable, trees and shrubs on streambanks or upland areas should be replaced (e.g. tree for tree). If the project is not completed during the appropriate growing season so vegetation can be established, other erosion control measures should be implemented.
- The following materials are not suitable for fill activities into waters of the U.S.: cars, buses, or rail cars, construction or demolition debris, garbage, loose or improperly placed tires, treated lumber (chromated copper arsenate (CCA), creosote, and pentachlorophenol), liquid or raw concrete not poured into forms, grouted riprap, bagged cement, and sewage or organic waste.
- The following conditions pertain to mitigation:
 - Stream mitigation should mimic natural stream sinuosity, stream substrate, and stream dimensions (cross-section and slope) upstream and/or downstream of the mitigation area.
 - Vegetated buffer strips shall not be acceptable as mitigation for wetlands impacts, except when using credits from an established and certified wetland mitigation bank where such buffers are incorporated into the bank's original calculated credits.
 - Vegetated buffers must be established around mitigation wetlands. The vegetated buffers shall consist of native species, and will normally be between 25 to 50 feet wide, or wider, to address documented water quality or habitat concerns.
 - The discharge of dredged or fill material that impacts more than 1/10th acre requires mitigation. Mitigation may be accomplished by restoring or creating equivalent at a

wetland either on-site, at a suitable off-site location, or a site under an in lieu fee mitigation agreement at a minimum ratio of 1.5 acres restored or created wetland for every 1.0 acre of affected area. If the impacts are mitigated by using credits from an established and certified wetland mitigation bank, 1.0 acre of wetland credit will be required for every 1.0 acre of affected area.

- No individual action shall be allowed if it jeopardizes the continued existence, or results in a take of, State-listed threatened or endangered species described on the Kansas Department of Wildlife and Parks website (http://www.kdwp.state.ks.us/news/other_services/threatened_and_endangered_species).
- Where practicable, measures should be taken to prevent the spread of invasive species. *Phalaris arundinacea* (Reed Canary Grass), *Lythrum salicaria* (Purple Loosestrife), *Bromus inermis* (Smooth Brome), *Phragmites, sp.* (Common Reed, River Reed) and *Tamarix, sp.* (Salt Cedar), are NOT appropriate choices of vegetation as plantings for erosion control measures and/or mitigation. National invasive species are listed on the USDA's website (<http://www.invasivespeciesinfo.gov/plants/main.shtml>).

Special Conditions for Certain Nationwide Permits

NWP 3 – Maintenance

In the case of maintenance of structures (3(b)) the activity is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 100 feet in any direction from structure.

NWP 7 - Outfall Structures

Controls shall be in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.

NWP 13 - Bank Stabilization

- Broken concrete used as bank stabilization must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Applicants must break all large slabs to conform to the well graded requirement. Generally, the maximum weight of any piece should not be more than 500 pounds.
- Gravel and dirt should not exceed 15% of the total fill volume.
- All protruding reinforcement rods, trash, asphalt, and other extraneous materials must be removed from the broken concrete prior to placement in waters of the United States.
- Encroachment of riprap into the channel will be kept to a minimum.
- The top elevation of the riprap shall not exceed the top elevation of the bank.

NWPs 3, 14, 23, 29, and 39 - Culverts

Any culvert must not impede the passage of fish or other aquatic organisms. The culvert design must mimic the natural shape and flow of the channel. To the maximum extent practicable, the structure should be bottomless and contain a substrate that matches the existing stream. For all box culverts with three or more cells on expected aquatic life use waters or restricted aquatic life use waters, the opening of the center culvert must be slightly lower than the adjacent culverts to concentrate low flows for the passage of aquatic organisms.